



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]

DECISION

FCP/141329

PRELIMINARY RECITALS

Pursuant to a petition filed May 31, 2012, under Wis. Admin. Code § DHS 10.55, to review a decision by Community Care Inc. in regard to Medical Assistance, a hearing was held on August 21, 2012, at Racine, Wisconsin.

The issue for determination is whether Community Care Inc. (CCI) properly denied petitioner's request for replacement of her platform stair lift.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Miha Gil, Case Manager
Tammy Chavez, Rn
Stephanie Edels, Manager
Community Care Inc.

ADMINISTRATIVE LAW JUDGE:

Michael A. Greene
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.

2. Petitioner is a 59-year old female who lives in the community with her husband and two daughters. She has a history of right-sided hemiparesis, right brachial paralysis, headaches, urinary urgency, anxiety and depression.
3. Until March 26, 2012, petitioner used a platform stair lift to get from the ground floor of her home to her basement. Petitioner would go to the basement to do laundry and hobbies. The lift has since stopped working and has been found to be irreparable.
4. On March 26, 2012, petitioner filed a request for repair or replacement of the stair lift and for the replacement of a screen door which does not stay open long enough to allow her to get out of the door with her walker. The request was denied by CCI on April 13, 2012 and by CCI's appeal committee on May 18, 2012. In each case the request was denied because petitioner's needs can be met in different ways.

DISCUSSION

The Family Care Program (FCP), which is supervised by the Department of Health and Family Services, is designed to provide appropriate long-term care services for elderly or disabled adults. *Medicaid Eligibility Handbook (MEH)*, §29.1. It is authorized under Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code at Chapter DHS 10. The program is operated and administered in each county by a Care Management Organization (CMO), which in this case is Community Care, Inc. Though Family Care enrollees are full partners in the assessment of needs and strengths and in the development of care plans those plans are subject to the general requirements and limitations outlined for the program, including the requirement that a service be cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes, Wis. Admin. Code §§DHS 10.44(2)(e) & (f). Medical assistance and its subprograms are meant to provide only basic and necessary health care

In the FCP, a case management organization (CMO) must develop an Individual Service Plan (ISP) in partnership with the member. Wis. Adm. Code, §DHS 10.44(2)(f). The ISP must reasonably and effectively address all of the member's long-term needs and outcomes to assist the member to be as self-reliant and autonomous as possible, but nevertheless must be cost effective. While the member has input, the CMO does not have to provide all services the member desires if there are less expensive alternatives.

DHS 10.44 Standards for performance by CMOs.

...

(2) CASE MANAGEMENT STANDARDS. The CMO shall provide case management services that meet all of the following standards:

...

(f) The CMO, in partnership with the enrollee, shall develop an individual service plan for each enrollee, with the full participation of the enrollee and any family members or other representatives that the enrollee wishes to participate . . . The service plan shall meet all of the following conditions:

1. Reasonably and effectively addresses all of the long-term care needs and utilizes all enrollee strengths and informal supports identified in the comprehensive assessment under par. (e) 1. Reasonably and effectively addresses all of the enrollee's long-term care outcomes identified in the comprehensive assessment under par. (e)(2) and assists the enrollee to be as self-reliant and autonomous as possible and desired by the enrollee.
3. Is cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes. . .

Wis. Admin. Code § DHS 10.41(2) states that:

Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n (c) and ss. 46.275, 46.277 and 46.278, Stats., the long-term support community options program under s. 46.27, Stats., and specified services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980).

A review of petitioner's situation does not support the conclusion that a new stair lift and screen door are medically necessary. It must be recalled that MA provides basic and necessary medical services and participants do not necessarily receive everything for which they ask. In this case there is no documented need for petitioner to gain independent access to her basement; she lives with family members who can operate the laundry machinery in the basement and bring the articles upstairs for her to fold and put away. Her hobbies can be moved to the ground floor of her house. Her concern with having access to the basement in case of tornado or severe weather is ameliorated by the availability of a safe refuge on the ground floor and by the fact that it would be difficult and perhaps more dangerous for a woman, paralyzed on one side to move quickly with a walker in an emergency and engage a stair lift which might shut down if power were lost due to the weather. An item or service is not "medically necessary" if it is duplicative of other services or if it is merely convenient for recipient, Wis. Admin. Code §101.03(96m)(b)6., 7. and petitioner's reasons for wanting to new stair lift appear to be more for her own convenience than for any true medical need.

I similarly find no justification for purchase of the screen door. The existing door can be operated with a slide so that it will stay open or family members can be available should petitioner want to go out.

CONCLUSIONS OF LAW

Community Care Inc. properly denied petitioner's request for a new stair lift and screen door where petitioner failed to show that they were medically necessary.

THEREFORE, it is

ORDERED

That the petition for review herein be and hereby is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new

evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 22nd day of October, 2012

Michael A. Greene
Administrative Law Judge
Division of Hearings and Appeals

c: Office of Family Care Expansion, DHSDHAOFCE@wisconsin.gov - DHSDHAOFCE@wisconsin.gov
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The preceding decision was sent to the following parties on October 22, 2012.

Community Care Inc.
Office of Family Care Expansion